Supreme Court, U.S.
FILED
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(5)

No. 03-1395

In the Supreme Court of the United States

GEORGE J. TENET, INDIVIDUALLY, JOHN E. MCLAUGHLIN, ACTING DIRECTOR OF CENTRAL INTELLIGENCE AND ACTING DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, AND UNITED STATES OF AMERICA, PETITIONERS

v.

JOHN DOE AND JANE DOE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: APR. 6, 2004
CERTIORARI GRANTED: JUNE 28, 2004

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 01-35419

JOHN DOE, ET AL.

v.

GEORGE J. TENET, ET AL.

DOCKET ENTRIES

DATE	PROCEEDINGS
4/13/01	Filed order (Alex KOZINSKI, Pamela A. RYMER): Filed in 01-80052: The petn for permission to appeal is granted. Within 10 days of the date of this order, petnrs shall perfect the appeal pursuant to FRAP 5(d). [01-35419] (crw) [01-35419]
	* * * * *
5/1/01	Filed John Doe motion to expedite appeal w/declaration. [01-35419] served on 4/27/01 [4156408] MOATT (crw) [01-35419]
5/1/01	Filed John Doe motion to clarify order. [01-35419], [01-35419] served on 4/27/01 [4156431] MOATT (crw) [01-35419]
5/30/01	Filed order CONFATT (CG) This cs is not sel for inclusion in the mediation program. Cnsl

DATE	PROCEEDINGS
	are requested to contact the mediator should circumstances develop that might warrant further settlement discussions. Br sch pre set by the court remains in effect. [01-35419] (kym) [01-35419]
7/19/01	Filed order MOATT (ML) Briefing is stayed pending the court's decision on th emotion by aples for clarification of the court's order in case no. 1-80052. Aples' motion to expedite this appeal will be decided following the court's decision on the motion for clarification. [01-35419] (em) [01-35419]
8/6/01	Filed order MOATT (ML) granting appellee's motion to expedite appeal. The provisions of 9th Cir.R. 31-2.2(a) shall not apply to this briefing schedule. [4156408-1] Appellants' brief, excerpts of record are due 9/5/01; aples answering brief is due within 28 day after service of the opening brief; and aplts' optional reply brief is due within 14 days after service of the answering brief. Aplts shall motior the issuance of the certificate of record. The clerk shall calendar this case on the next available calendar following receipt of aples' brief. [01-35419] (em) [01-35419]
8/27/01	Received Appellant George J. Tenet in 01-35419's brief in 15 copies 56 pages (Informal: n) deficient defective cert of compliance: notified counsel. Served on 8/23/01 [01-35419] (em) [01-35419]

DATE	PROCEEDINGS
	* * * * *
9/12/01	Filed original and 15 copies Appellants' opening brief (Informal: n) 56 pages and five excerpts of record in 1 volume; served on 8/23/01 [01-35419] (em) [01-35419]
	* * * * *
10/1/01	Filed original and 15 copies appellee John Doe in 01-35419's 56 pages brief, 1 supp Exc. vol.; served on 9/28/01 [01-35419] (em) [01-35419]
	* * * * *
10/29/01	Filed original and 15 copies USA in 01-35419, George J. Tenet in 01-35419 reply brief, (Informal: NO) 28 pages; served on 10/26/01 [01-35419] (mhf) [01-35419]
	* * * * *
12/26/01	FILED CERTIFIED RECORD ON APPEAL IN 4 VOLS.(TOTAL): 3 vols/1 expando CLERKS REC (Original) [01-35419] (sb) [01-35419]
2/7/02	ARGUED AND SUBMITTED TO Henry A. Politz, William C. CANBY, Richard C. TALLMAN [01-35419] (sb) [01-35419]
2/19/02	Received Freddi Lipstein for Appellants' letter dated 2/15/02 re: attaching copy of a letter from opponent sent to him after oral

DATE	PROCEEDINGS
	argument, and responding; served 2/15/02 [01-35419] FAXED PANEL (em) [01-35419]
3/8/02	Received counsel Steven W. Hale letter dated 3/7/02 re: responding to the 2/15/02 ltr of aplt; served 3/7/02 FAXED PANEL [01-35419] (em) [01-35419]
5/31/02	Filed order (Deputy Clerk: PA) Due to the death of Circuit Judge Politz, Judge Berzon has been drawn to replace him on the panel. [01-35419] (em) [01-35419]
	* * * * *
2/11/03	Filed USA in 01-35419, George J. Tenet in 01-35419 additional citations, served on 2/10/03 PANEL. [01-35419] (kkw) [01-35419]
3/3/03	Filed John Doe in 01-35419 additional citations, served on 2/26/03 PANEL. [01-35419] (kkw) [01-35419]
5/29/03	FILED OPINION: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Costs on appeal are awarded to the aples. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. William C. CANBY; Marsha S. BERZON, author; Richard C. TALLMAN, dissenting.) FILED AND ENTERED JUDGMENT. [01-35419] (mhf) [01-35419]
	* * * * *

DATE	PROCEEDINGS
7/11/03	[4787411] Filed original and 50 copies Appellants' petition for panel rehearing and petition for rehearing en banc 19 p.pages, served on 7/10/03 (PANEL AND ALL ACTIVE JUDGES) [01-35419] (dg) [01-35419]
7/16/03	Filed order (William C. CANBY, Marsha S. BERZON, Richard C. TALLMAN): The pla/apels are requested to file a response to the petition for rehearing and rehearing en banc within 21 days of the date of this order. The response shall not exceed 15 pages in length. [01-35419] (gva) [01-35419]
8/6/03	Filed Appellee John Doe in 01-35419's response to petition, opposing petition for enbanc rehearing [4787411-1] served on 8/5/03 (PANEL & ALL ACTIVE JUDGES) [01-35419] (mhf) [01-35419]
1/7/04	Filed order FOR PUBLICATION (William C. CANBY, Marsha S. BERZON, Richard C. TALLMAN,): . . . The petition for rehearing and the petition for rehearing en banc are DENIED. [4787411-1] Kleinfeld, Circuit Judge, with whom Circuit Judges Kozinski, O'Scannlain, Tallman, Bybee and Callahan Join, dissenting from denial of rehearing en banc. [01-35419] (hh) [01-35419]

DATE	PROCEEDINGS
1/13/04	Filed Appellants USA and George J. Tenet's motion to stay issuance of the mandate; served on 1/12/04 (to AUTHOR) [4945279] [01-35419] (hh) [01-35419]
1/13/04	Filed order (Marsha S. BERZON,): The govt's motion to stay issuance of the mandate pending the filing of a petition for a writ of certiorari is GRANTED. [4945279-1] [01-35419] (hh) [01-35419]
1/20/04	Filed Appellee John Doe's bill of costs ($110.00), served on 1/16/04 [01-35419] (hh) [01-35419]
4/13/04	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 03-1395 filed on 4/6/04. [01-35419] (hh) [01-35419]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
(SEATTLE)

Docket No. 2:99-cv-01597-RSL

JOHN DOE, ET AL.

v.

GEORGE J. TENET, ET AL.

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/06/1999	1	COMPLAINT (Summons(es) issued) Receipt # 261310 (PM) (Entered: 10/10/1999)
12/17/1999	3	AMENDED COMPLAINT [1-1] by plaintiff John Doe, plaintiff Jane Doe (JN) (Entered: 12/27/1999)
		* * * * *
12/23/1999	2	STIPULATION and ORDER by Judge Robert S. Lasnik regarding scheduling. Defts have until 1/27/00 to file a motion to dismiss, answer or other responsive pleading. Pltf's intend to serve upon defts a motion for injunctive or other

DATE	DOCKET NUMBER	PROCEEDINGS
		relief due on or before 1/17/00. (See order for further details) (cc: counsel, Judge) (MD) (Entered: 12/23/1999)
01/24/2000	4	MOTION by defendant USA to dismiss NOTED FOR 4/7/00 (MD) (Entered: 01/28/2000)
01/24/2000	5	MEMORANDUM by defendant USA in support of motion to dismiss for lack of subject matter jurisdiction or, alternatively, for failure to state a claim[4-1] (MD) (Entered: 01/28/2000)
		* * * * *
02/07/2000	6	MOTION by plaintiffs for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) NOTED FOR 4/7/00 (VK) (Entered: 02/08/2000)
02/07/2000	7	MEMORANDUM by plaintiff in support of motion for preliminary injunction and waiver

DATE	DOCKET NUMBER	PROCEEDINGS
		of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] (VK) (Entered: 02/08/2000)
02/07/2000	8	DECLARATION of John Doe by plaintiffs re motion for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] (VK) (Entered: 02/08/2000)
02/07/2000	9	DECLARATION of Jane Doe by plaintiffs re motion for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] (VK) (Entered: 02/08/2000)
02/07/2000	10	DECLARATION of Steven W. Hale by plaintiffs re motion for preliminary injunction and waiver of injunction bond (OA

DATE	DOCKET NUMBER	PROCEEDINGS
		requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] (FILED IN EXPANDO) (VK) (Entered: 02/08/2000)
		* * * * *
02/09/2000	12	RETURN OF SERVICE of summons and complaint executed upon defendant USA on 2/8/00 (dktclk) (Entered: 02/14/2000)
03/10/2000	13	RESPONSE by plaintiff John Doe, plaintiff Jane Doe to motion to dismiss [4-1] (CL) (Entered: 03/13/2000)
03/15/2000	14	ORDER/NOTICE OF JOINT STATUS REPORT Joint Status Report due 6/19/00 (cc: counsel, Judge) (VK) (Entered: 03/15/2000)
03/30/2000	15	CERTIFICATE of Carol Kness re: service of amd complaint [3-1] and complaint [1-1] (Exhibits 1-6 Attached) (KERR) (Entered: 04/04/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
03/30/2000	16	STIPULATION allowing amendment to complaint (KERR) (Entered: 04/04/2000)
03/30/2000	17	SECOND AMENDED COMPLAINT by plaintiffs (KERR) (Entered: 04/04/2000)
04/05/2000	18	MINUTE ORDER by Judge Robert S. Lasnik SETTING pltf's motion for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] at 9:00 4/25/00 (cc: counsel, Judge, GG) (VK) (Entered: 04/06/2000)
04/07/2000	19	MINUTE ORDER by Judge Robert S. Lasnik SETTING oral argument for pltf's motion for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] at 9:00 4/25/00, SETTING oral argument for deft's motion to dismiss [4-1] at 9:00 4/25/00 (cc: counsel, Judge, GG) (VK) (Entered: 04/07/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
04/10/2000	20	REPLY by defendant TO RESPONSE to motion to dismiss [4-1] (KERR) (Entered: 04/12/2000)
04/10/2000	21	REPLY by plaintiff TO RESPONSE to motion for preliminary injunction and waiver of injunction bond (OA requested and set for hearing per stipulation and order dated 12/21/99 for 4/21/00) [6-1] (KERR) (Entered: 04/12/2000)
04/24/2000	22	MINUTES: RSL; Dep Clerk: Gail; CR: Sue Palmerton; Pla Counsel Steven Hale; Def Counsel Harold Malkin. Oral Argument held on motion for prel inj and court to issue order (MD) (Entered: 04/26/2000)
		* * * * *
05/10/2000	23	TRANSCRIPT of proceedings for the following date(s): 4/25/00 (Re: Hearing on Motions) CR initials: S. Palmerton (dktclk) (Entered: 05/10/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
06/07/2000	24	ORDER by Judge Robert S. Lasnik DENYING pltfs' motion for preliminary injunction [6-1]; GRANTING defts' motion to dismiss [4-1] with respect to pltfs' equal protection claim and DENYING it in all other respects (cc: counsel, Judge) (VK) (Entered: 06/07/2000)
06/12/2000	25	MINUTE ORDER by Judge Robert S. Lasnik joint status report ddl continued to 6/23/00 (cc: counsel, Judge) (VK) (Entered: 06/12/2000)
		* * * * *
06/20/2000	28	JOINT STATUS REPORT filed by all parties. (VK) (Entered: 06/22/2000)
06/21/2000	26	STIPULATION and ORDER by Judge Robert S. Lasnik: defts' have until 7/19/00 to file their answer (cc: counsel, Judge) (VK) (Entered: 06/21/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
06/21/2000	27	MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES PURSUANT TO LR 16 by Judge Robert S. Lasnik Deadline to Join Additional Parties is 7/19/00; discovery mtn filing ddl set for 1/29/01; discovery ddl set for 2/5/01; dispositive mtns ddl set for 3/5/01; 39.1 designation effective set for 4/20/01; pretrial order ddl set for 5/4/01; Motions in Limine deadline 5/4/01; trial brief ddl set for 5/30/01; trial set for 6/4/01 (length of trial 4-7 days) (cc: counsel, Judge, GG) (VK) (Entered: 06/22/2000)
07/19/2000	29	MOTION by defendants for summary judgment or in the alternative renewed mtn to dismiss NOTED FOR 8/11/00 (KERR) (Entered: 07/24/2000)
07/19/2000	30	MEMORANDUM by defendants in support of motion for summary judgment or in the alternative renewed mtn to dismiss (KERR) (Entered: 07/24/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
07/25/2000	31	STIPULATION and ORDER by Judge Robert S. Lasnik RENOTED FOR 9/29/00 defts' motion for summary judgment or in the alternative renewed mtn to dismiss [29-1]; pltfs' response due 9/11/00; defts' reply due 9/29/00 (cc: counsel, Judge) (VK) (Entered: 07/26/2000)
		* * * * *
09/12/2000	32	STIPULATION and ORDER by Judge Robert S. Lasnik RENOTED FOR 10/13/00 federal defts' motion for summary judgment or in the alternative renewed mtn to dismiss [29-1]; response due 9/25/00; reply due 10/12/00 (cc: counsel, Judge) (VK) (Entered: 09/13/2000)
		* * * * *
10/03/2000	33	STIPULATION and ORDER by Judge Robert S. Lasnik allowing parties to file overlength briefs (cc: counsel, Judge) (VK) (Entered: 10/03/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
10/04/2000	34	RESPONSE by plaintiffs to motion for summary judgment or in the alternative renewed mtn to dismiss [29-1] (KERR) (Entered: 10/05/2000)
10/04/2000	35	DECLARATION of Steven Hale by plaintiffs re: motion response [34-1] (KERR) (Entered: 10/05/2000)
10/04/2000	36	MOTION by plaintiff to strike portions of William H McNair's declaration NOTED FOR 10/13/00 (KERR) (Entered: 10/06/2000)
		* * * * *
10/10/2000	39	RESPONSE by defendants to motion to strike portions of William H McNair's declaration [36-1] (KERR) (Entered: 10/12/2000)
10/11/2000	38	STIPULATION and ORDER by Judge Robert S. Lasnik RENOTED FOR 10/20/00 Federal defts' motion for summary judgment or in the alternative renewed mtn to dismiss [29-1]; reply due 10/17/00 (cc: counsel, Judge) (VK) (Entered: 10/12/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
10/16/2000	40	MINUTE ORDER by Judge Robert S. Lasnik RENOTED FOR 10/20/00 pltfs' motion to strike portions of William H McNair's declaration [36-1] (cc: counsel, Judge) (VK) (Entered: 10/16/2000)
10/17/2000	41	REPLY by federal defendant TO RESPONSE to motion for summary judgment or in the alternative renewed mtn to dismiss [29-1] (RS) (Entered: 10/19/2000)
10/20/2000	42	REPLY by plaintiff re: to defts' response to motion to strike portions of Wm H. McNair's Declaration [36-1] (MD) (Entered: 10/24/2000)
10/20/2000	43	MOTION by plaintiff to strike portions of defts reply (submitted in connection with defts' "renewed" motion to dismiss noted for 10/20/00) NOTED FOR 10/20/00 (MD) (Entered: 10/24/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
10/20/2000	45	MOTION by defendant USA for protective order NOTED FOR 11/10/00 (MD) (Entered: 10/24/2000)
10/20/2000	46	MEMORANDUM by defendant USA in support of motion for protective order [45-1] (MD) (Entered: 10/24/2000)
		* * * * *
10/24/2000		PRAECIPE by George J Tenet, USA to attach or replace documents to motion for protective order [45-1] in the Court file. (KERR) (Entered: 10/28/2000)
10/24/2000	47	RESPONSE by defendant to motion to strike portions of defts reply (submitted in connection with defts' "renewed" motion to dismiss noted for 10/20/00) [43-1] (KERR) (Entered: 10/28/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
10/27/2000	48	REPLY by plaintiff TO RESPONSE to motion to strike portions of defts reply (submitted in connection with defts' "renewed" motion to dismiss noted for 10/20/00) [43-1] (KERR) (Entered: 10/31/2000)
10/27/2000	49	DECLARATION of Steven Hale by plaintiff re: motion reply [48-1] (KERR) (Entered: 10/31/2000)
		* * * * *
11/06/2000	51	RESPONSE by plaintiff to motion to stay discovery and in support of cross-motion for discovery conf and referral to 39.1 mediation (VK) (Entered: 11/09/2000)
11/06/2000	52	Supplemental DECLARATION of Steven W. Hale by plaintiffs re: motion response [51-1], re: motion reply [51-2] (VK) (Entered: 11/09/2000)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
11/07/2000	54	REPLY by defendants to pltfs' response to motion to stay discovery and response to pltfs' cross-mtn (KERR) (Entered: 11/09/2000)
01/22/2001	55	ORDER by Judge Robert S. Lasnik DENYING dft's motion for summary judgment or in the alternative renewed mtn to dismiss [29-1] (cc: counsel, Judge) (CL) (Entered: 01/22/2001)
01/22/2001	56	ORDER REGARDING DFTS' MTN FOR A PROTECTIVE ORDER by Judge Robert S. Lasnik. The Court has referred this matter to the Honorable Wm L. Dwyer who will serve as a mediatior/settlement judge. Parties should contact Judge Dwyer's chambers to establish a time in late Feb or early March for a mediation. In the interim, the Court will stay discovery until this mediation occurs but will set a

DATE	DOCKET NUMBER	PROCEEDINGS
		discovery conference to outline what issues will emerge should the matter proceed to trial (cc: counsel, Judge) (CL) (Entered: 01/22/2001)
01/22/2001	57	ORDER APPOINTING U.S. DISTRICT JUDGE WILLIAM L. DWYER AS SETTLEMENT JUDGE by Judge Robert S. Lasnik. The Court directs counsel to contact Judge Dwyer's Judicial Assistant, Trish Graham at 206-553-0103 to schedule a settlement conference for late Feb or early Mar, 2001. (cc: counsel, RSL, WLD, TG)) (CL) (Entered: 01/23/2001)
01/25/2001	58	MINUTE ORDER by Judge Robert S. Lasnik. A discovery conference has been scheduled at 9:00 2/15/01 in room 911. (cc: counsel, Judge, GG) (CL) (Entered: 01/26/2001)
02/02/2001	59	MINUTE ORDER by Judge Robert S. Lasnik Settlement Conference set for 9:00 3/9/01

DATE	DOCKET NUMBER	PROCEEDINGS
		before Judge Dwyer; briefs due two days prior to conf (cc: counsel, RSL, G G, WLD, EM) (VK) (Entered: 02/02/2001)
02/15/2001	60	MINUTE ORDER by Judge Robert S. Lasnik. Dft's mtn regarding interlocutory appeal should be filed no later than 4:30pm on 2/22/01. Pltf's opposition should be filed no later than 4:30pm on 2/26/01, dft's reply due 4:30pm 2/28/01 (cc: counsel, Judge) (CL) (Entered: 02/15/2001)
02/22/2001	61	MINUTE ORDER by Judge Robert S. Lasnik directing deft's motion for interlocutory appeal be filed by 2/22/01; pltf's opposition by 2/26/01; deft's reply by 2/28/01 (cc: counsel, Judge) (VK) (Entered: 02/23/2001)
02/22/2001	62	MOTION by defendant USA for certification of interlocutory orders and for stay of further proceedings NOTED FOR 2/28/01 (CL) (Entered: 02/26/2001)

DATE	DOCKET NUMBER	PROCEEDINGS
02/22/2001	63	MEMORANDUM by defendant USA in support of motion for certification of interlocutory orders and for stay of further proceedings [62-1] (CL) (Entered: 02/26/2001)
		* * * * *
02/26/2001	73	RESPONSE by plaintiffs to motion for certification of interlocutory orders and for stay of further proceedings [62-1] (CL) (Entered: 03/15/2001)
		* * * * *
02/27/2001	66	STIPULATION and ORDER by Judge Robert S. Lasnik. Pursuant to the Stipulation of the parties, it is hereby ORDERED: pltfs can file overlength brief in response to dft's mtn for certification of interlocutory orders (cc: counsel, Judge) (CL) (Entered: 03/06/2001)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
02/28/2001	67	REPLY by defendants TO RESPONSE to motion for certification of interlocutory orders and for stay of further proceedings [62-1] (CL) (Entered: 03/06/2001)
03/02/2001	68	LETTER by plaintiff John Doe, plaintiff Jane Doe re: motion reply [67-1] (CL) (Entered: 03/07/2001)
03/02/2001	69	SUR-RESPONSE by plaintiffs to motion for certification of interlocutory orders and for stay of further proceedings [62-1] (CL) (Entered: 03/07/2001)
		* * * * *
03/08/2001	71	ORDER by Judge Robert S. Lasnik. IT IS ORDERED: dfts are hereby given permission to file a sur-reply no later than 3/12/01. The Court will issue a decision on mtn for interlocutory appeal and for a stay on 3/14/01. (cc: counsel, Judge) (CL) (Entered: 03/08/2001)

DATE	DOCKET NUMBER	PROCEEDINGS
03/12/2001	72	REPLY by defendant TO RESPONSE to motion for certification of interlocutory orders and for stay of further proceedings [62-1] (CL) (Entered: 03/14/2001)
03/14/2001	74	ORDER by Judge Robert S. Lasnik GRANTING dfts' motion for certification of interlocutory orders and for stay of further proceedings [62-1]. Stay is granted pending the outcome of the interlocutory appeal. (cc: counsel, Judge) (CL) (Entered: 03/15/2001)
04/16/2001	75	ORDER (CCA 01-80052) Petition for permission to appeal is GRANTED. W/in 10 days of this order petitioner shall perfect the appeal. (JK) (Entered: 04/16/2001)
04/16/2001	76	SUBSTITUTION OF COUNSEL on behalf of George J. Tenet, USA Susan M. Demske terminating attorney Harold Malkin for USA, attorney Harold Malkin for George J. Tenet (CL) (Entered: 04/18/2001)

DATE	DOCKET NUMBER	PROCEEDINGS
09/17/2001	77	NOTICE by defendant of change of address of Susan Demske/amended notice of withdrawal and substitution of counsel; adding Brian C. Kipnis as local counsel (VK) (Entered: 09/17/2001)
12/21/2001		CLERK'S RECORD ON APPEAL transmitted to Circuit (vol. 1-3, expando 1) (SA) (Entered: 12/21/2001)
07/21/2003	78	ORDER of USCA (01-35419): plaintiffs-appellees requested to file response to petition for rehearing w/in 21 days of this order. (ZG,) (Entered: 08/04/2003)

SECURITY GUIDANCE FOR REPRESENTATIVES

As you may be representing a client who is affiliated with the Central Intelligence Agency, the Office of Personnel Security, Central Intelligence Agency is providing the following guidance for your review. This guidance answers typical questions that you may have about working with classified information. The guidance assumes that you have been approved to receive a Secret clearance in conjunction with your anticipated representation of an Agency-affiliated client. If you have any questions about the guidance, please telephone your designated Agency security officer, named in the cover letter.

What does my Secret clearance mean, in general?

You have been granted a Secret clearance in anticipation that representing your client may involve classified information. In fact, the mere association of your client with the Agency may be classified. As a result, you may be authorized access to certain information classified up to and including Secret, provided that an appropriate Agency official has first determined you have a bona fide need-to-know for the information.

Your clearance is for you alone and is limited to your representation of your client in this particular case. *It is not transferable* to other cases involving your client, to other cases involving other Agency-affiliated individuals, or to matters involving other US Government organizations unconnected with your client. *Unless you are specifically authorized by the Agency*, your clearance does not allow you to access Agency facilities, interview other Agency-affiliated personnel, discuss classified information with anyone (including persons in your office) who lacks a security clearance and a bona

fide need-to-know, and access and/or store any classified documents or other classified information in any form.

What if I need to discuss this case or share information with others in my office?

You may discuss this case or share case-relevant information with others in your office, provided that you do not divulge classified information, including, but not limited to, your client's name and association with the Agency, if this association is classified. If you believe that others in your office will need access to classified information, contact your designated Agency security officer and request that those requiring access also be cleared. The Agency determines who has a need-to-know for classified information and who will be submitted for a security clearance. You may not discuss or otherwise share classified information with other people until the Agency advises you that they have received their clearances and have completed all the steps you are being asked to complete as a cleared representative. If you have questions about whether you may discuss or otherwise share classified information with someone, please contact your designated Agency security officer.

How do I know when information is classified?

Your client should not be providing you with classified information in any form unless the appropriate security arrangements have been made by your designated Agency security officer. If you are in doubt as to the classification of information you have received or wish to receive, your designated Agency security officer will assist you in determining the information's classification status. If your client provides you with information, such as the first and last names (vice first names and last initials) of Agency-affiliated individuals, intelligence sources or methods, site names or specific locations, summaries or details of Agency operations, detailed Agency organizational structures, statistics, and/or technologies, the information is most likely classified. You should handle and protect any and all such information as classified until your designated Agency security officer determines the classification status of the information.

What rules must I follow when working with information that may be classified?

The most important rule is that you may only discuss or otherwise share classified information with people who have an Agency-provided Secret clearance, at a minimum, and an Agency-determined need-to-know for the information. You also may not undertake discussions of classified information in the presence of uncleared persons or cleared persons lacking need-to-know.

A second important rule is that you may only review, create, store, and/or otherwise work with or handle classified information in an Agency secure area. The Agency secure area will be an office-like environment where you may more freely discuss classified or other sensitive details of the case with your client or other cleared members of your office, review classified information, create documents based upon this information, and store any documents or notes based upon this information. The Agency will provide you with paper and pens/pencils, stand-alone information processing equipment (e.g., a personal computer), and storage facilities. Only Agency-provided equipment and facilities may be used to create documents containing classified information. As an alternative, your designated

Agency security officer can arrange for classified documents to be redacted into unclassified form for use at your office. You, however, may neither create classified documents at your office, nor may you reconstruct classified documents from redacted, unclassified documents stored at your office.

When working in the Agency secure area, you will be escorted by your client or a cleared person unaffiliated with the case. Your designated Agency security officer will have any documents or notes you wish to remove from the secure area reviewed for classification purposes. If the documents or notes are classified, they must be sanitized before removal or remain in the secure area. Due to the difficulty with reviewing information in forms other than hardcopy, only unclassified hardcopy documents may be removed after approval. *Appropriate arrangements will be made to ensure that attorney-client privilege is preserved during the Agency's review of documents for classification purposes.*

In what forum may I present classified information, if necessary?

Presentation of classified information in a public forum is never permitted. Most cases do not require the presentation of classified information. However, the Equal Employment Opportunity administrative proceedings are conducted in a classified setting up to the Secret level. If your client requests an administrative hearing under 29 C.F.R. 1614.108(f), either party may present classified information at the hearing. In most cases, it is not necessary to include classified information in the text of motions, briefs, or correspondence relating to the proceeding.

What procedures do I follow prior to submitting a court filing or otherwise promulgating anything related to or based upon my client's case, regardless of the classification?

Prior to submitting a court filing or otherwise promulgating anything related to or based upon your client's case, provide a copy of the filing or other information to your designated Agency security officer, unless you have made other arrangements with the Agency to ensure that classified information is not publicly disclosed. Your designated Agency security officer will ensure that an appropriate Agency representative unaffiliated with the case conducts a prepublication review of the information. This review will ensure that classified information is not disseminated to persons lacking appropriate clearances or approvals.

What do I do if my client fails to gain Agency approval prior to releasing classified information to me or provides me such information outside of an Agency secure area?

If your client fails to gain Agency approval prior to releasing classified information or provides such information outside of an Agency secure area, contact your designated Agency security officer immediately.

What are the penalties for failing to adhere to this guidance?

When you read and sign the Nondisclosure/Secrecy Agreement and the Acknowledgment of Security Requirements form, you agree to adhere to this guidance as well as any other requirements noted in the agreement or form. Your failure to adhere to these requirements may result in the Agency withdrawing your security clearance and/or your breach being referred to the Department of Justice for possible criminal prose-

cution. The Agency also reserves the right to withdraw your security clearance should it receive any information indicating that you should not have continued access to classified information.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
(SEATTLE)

No. C99-1597L

JOHN DOE AND JANE DOE, HUSBAND AND WIFE,
PLAINTIFFS

v.

GEORGE J. TENET, INDIVIDUALLY AND AS DIRECTOR OF CENTRAL INTELLIGENCE AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF STEVEN W. HALE

STEVEN W. HALE states as follows:

1. I am one of the attorneys of record for the plaintiffs, John Doe and Jane Doe, know the contents of this declaration to be true and am otherwise competent to testify thereto.

2. In response to plaintiffs' Second and Third Requests for Production and plaintiffs' counsel's additional request to view unredacted documents at a secure Agency facility, defendants refused to produce anything, even in redacted form. In addition, defendants refused to produce any documents, including Regulation C, in a secure Agency facility on October 12, 2000 in Washington, D.C. when Betsy Alaniz and I were in Washington D.C. for this express purpose. In a Rule 37 conference on October 19, defendants acknowledged that, while Ms. Alaniz and I had the requisite security clearances to review additional PL-110 regulations, the

Agency's refusal to allow access was predicated on a determination that we "did not have a need to know."

3. As is evidenced by the Stipulation and Agreed Order of June 21, 2000, plaintiffs agreed not to require an answer to the complaint for a specific time during which defendants were to file what defendants' counsel described as "supplemental briefing," allegedly invited by footnote 7 in the Court's June 7, 2000 order. Never did defendants mentioned the filing of a summary judgment motion that would be supported by alleged evidence. If a motion for summary judgment would have been mentioned, plaintiffs would have objected, since discovery had not even begun, and would not have agreed to the Stipulated Order.

I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct.

SIGNED AND DATED at Seattle, Washington, this 26th day of October, 2000 by STEVEN W. HALE.

/s/ STEVEN W. HALE
STEVEN W. HALE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
(SEATTLE)

No. C99-1597L

JOHN DOE AND JANE DOE, HUSBAND AND WIFE,
PLAINTIFFS

v.

GEORGE J. TENET, INDIVIDUALLY AND AS DIRECTOR OF CENTRAL INTELLIGENCE AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, AND THE UNITED STATES OF AMERICA, DEFENDANTS

SUPPLEMENTAL DECLARATION OF STEVEN W. HALE

STEVEN W. HALE states as follows:

1. I am one of the attorneys of record for the plaintiffs, John Doe and Jane Doe, know the contents of this declaration to be true and am otherwise competent to testify thereto.

2. Counsel for defendants has demanded, pursuant to a letter of November 2, 2000 that plaintiffs correct what defendants contend is a misleading statement in the reply brief and the corresponding declaration submitted to the Court in connection with the pending motion by defendants. Attached hereto as Exhibit 1 is a true and correct copy of Mr. Malkin's November 2, 2000 letter.

3. Plaintiffs do not believe that the subject statement is misleading in any way. Nonetheless, because of

defendants' demand, and in order to promptly clarify any potentially unclear facts, plaintiffs submit to the Court a true and correct copy of their response to defendants' counsel (attached hereto as Exhibit 2), which explains the situation in some detail.

I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct.

SIGNED AND DATED at Seattle, Washington, this 6th day of November, 2000 by STEVEN W. HALE.

/s/ STEVEN W. HALE
STEVEN W. HALE

EXHIBIT 1

Seal Omitted

U.S. Department of Justice

United States Attorney
Western District of Washington

Please reply to:
Harold Malkin
Assistant United States Attorney
Direct Line: (206) 553-6526

601 Union Street, Suite 5100
Seattle, Washington 98101-3903

Tel: (206) 553-7970
Fax: (206) 553-0882

November 2, 2000
[Received: Nov. 3, 2000]

Via FAX and Regular Mail
Steven Hale, Esq.
Perkins Coie
1201 Third Ave., Suite 4800
Seattle, WA 98101-3099

Re: Doe v. Tenet, et al.
No. C99-1597L, USDC, W.D. Washington

Dear Steve:

I have been reflecting upon our conversation the other day during which I expressed to you my concern over a representation you made in both Plaintiffs' Reply Motion to Strike Portions of Defendants' Reply and the declaration you submitted in support thereof. Specifically you state in Plaintiffs' Reply that:

> Defendants even refused to produce additional regulations, which would have included Regulation C, in a secure Agency facility on October 12, 2000 in Washington, D.C. when plaintiffs' counsel were in Washington, D.C. for this express purpose.

Reply at 2. Likewise, in your declaration, you state:

> In addition, defendants refused to produce any documents, including Regulation C, in a secure

> Agency facility on October 12, 2000 in Washington, D.C. when Betsy Alaniz and I were in Washington, D.C. for this express purpose.

Declaration at paragraph 2.

The impression you are clearly attempting to create is that the CIA allowed you and Betsy to travel to Washington, D.C. for the "express purpose" of reviewing Agency documents and that the CIA thereafter refused to make documents available to you. The suggestion that the CIA acted in the fashion you imply is factually inaccurate and you know it to be so.

As you well know and acknowledged during our conversation, you and Betsy were informed in advance of your trip to Washington, D.C. that the CIA would not be making any documents available for your inspection. Furthermore, as you also acknowledged, your trip to Washington, D.C. was not for the "express purpose" of reviewing the aforementioned documents. The fact is that you and Betsy were traveling to Washington, D.C. principally, and in any case, to attend a firm partnership meeting.

I would appreciate your taking immediate action to correct the record on this issue. If no such action is taken by COB Monday, November 6, I will take whatever steps I deem necessary to set the record straight.

Thank you for your prompt attention to this matter.

Sincerely,

KATRINA C. PFLAUMER
United States Attorney

/s/ HAROLD MALKIN
HAROLD MALKIN
Assistant United States Attorney

EXHIBIT 2

PERKINS COIE LLP

1201 THIRD AVENUE, SUITE 4800 SEATTLE, WASHINGTON 98101-3099
TELEPHONE: 206 583-8888 FACSIMILE: 206 583-8500

Steven W. Hale
(206) 583-8633
hales@perkinscoie.com

November 6, 2000

Harold A. Malkin, Esq.
U.S. Attorneys' Office
601 Union Street, Suite 5100
Seattle WA 98101

Re: John Doe and Jane Doe v. Tenet and United States of America
U.S. District Court Cause #C99-1597L

Dear Harold:

This letter replies to your letter of November 2, 2000.

You are mistaken in your statement that I "acknowledged" in our recent conversation that Betsy and I were not in D.C. for the "express purpose" of viewing CIA documents. What I acknowledged is what you already knew, that we were there on October 12 to work on this case and were then attending a partners' meeting beginning on October 13. The fact that we had other business the day after our business on this case does not mean that we were not in D.C. on October 12 expressly for the purpose of working on this case.

As I explained in our recent conversation, the purpose of our representation to the Court about defendants' failure to produce documents was in support of our contention that defendants should not be able to make arguments about what is referred to as Regulation C, because this and related documents had not

been produced to us. Thus, it was unnecessary to explain all of the details to the Court related to defendants' refusal to produce documents to us. The relevant facts are that we requested that defendants produce documents to us on October 12 and defendants refused. The issue being addressed was not the propriety of the defendants' conduct on a discovery matter but whether Regulation C should be considered by the Court.

What we said in our filings with the Court was accurate. We certainly did not intend to imply nor do we think we did imply that defendants let us travel to D.C. without first advising us that production would not be made and, if that is the impression conveyed, it was done so mistakenly and we apologize. However, your November 2 letter to me is not accurate in the sense of what I acknowledged to you (as addressed above) and does not tell the whole story. In our view, the salient facts are:

1. Ms. Alaniz and I were given Secret level security clearances by the CIA in 1997 for the purposes of representing our clients in their dispute with the CIA. At the time the clearances were granted, the CIA representative showed Ms. Alaniz and me several documents which, while not bearing classification designation, apparently were considered by the CIA to be classified.

2. On two subsequent occasions (November 6, 1997 and August 3, 1998) I was allowed to view documents related to this case (a very few, I might add) at a CIA facility in the Washington D.C. area. These documents were not marked as classified but apparently are considered classified by the CIA.

3. After defendants filed their current motion to dismiss, we requested production of the documents referred to by Mr. McNair in his declaration and we noted Mr. McNair's deposition. Defendants produced several redacted regulations (referred to as Regulations A and B) and permitted us to depose Mr. McNair on September 7, 2000.

4. When Mr. McNair disclosed during deposition the existence of additional PL-110 regulations (classified at the Secret level), I asked about obtaining these additional PL-110 regulations. Mr. McNair responded that he believed that our security clearances were no longer valid, having been granted only for the administrative proceedings. Later you also told me as a basis for not producing documents to us that you thought our security clearances were no longer valid.

5. By letter of September 29, 2000 (copy attached), I wrote you to follow up on one or more telephone conversations we had previously had about our request to review documents at the CIA. We had requested to see both the documents that I had already been shown and my notes about those documents, which the CIA retained, as well as the additional PL-110 regulations about which Mr. McNair testified. Since you had insisted that these requests be formalized, we had, provided to you on September 25, 2000 with Plaintiffs' Second Requests for Production and provided you on September 29, 2000 with Plaintiffs' Third Requests for Production.

6. My letter of September 29 advised you (as I had also advised in earlier conversations) that Betsy and I were going to be in Washington D.C. for other business during the week of October 9 but that we were going to go a day early for the express purpose of working on

this case and reviewing CIA documents. During our conversation, I also explained that we were doing this to save expenses. As we have advised you before, Perkins Coie has expended in excess of $600,000 on this pro bono case. I further explained that, with regard to the documents I had been shown before by the CIA, I wanted to refresh myself as to the contents of the documents and, in addition, I reminded you that Betsy had not seen some of the documents and I wanted her reaction to them. You indicated that even with a formal discovery request you doubted that the Agency would produce anything at all, including the documents previously reviewed. I urged that defendants reconsider that position, stressing that there could be no rational basis to denying us access to documents already shown to me. As I recall, you agreed to discuss the matter further with the Agency.

7. On Tuesday, October 10, you communicated to us the CIA's refusal to produce additional documents or even allow us to review the documents I had already seen twice or my notes.

8. On Wednesday, October 11, Betsy and I traveled to Washington D.C. as planned for the express purpose of working on this case on Thursday, October 12, the day before our partner meeting began. Our tickets for this travel were purchased on September 12. Our activities on October 12 were related solely to this case and included meetings with Members of Congress and the staff of the House Permanent Select Committee on Intelligence. We were available on the 12th to review documents at the CIA but were not permitted to do so. Had defendants wished to mitigate the unfair surprise of dropping Regulation C on us in your October 17 reply brief, you could have made it available to us

October 12. As was later explained (see below), you did not because the Agency contends we did not have a "need to know."

9. We discussed the defendants' October 10 refusal to produce any documents to us at a Rule 37 conference on October 19. During that conference, Mr. Pines of the CIA, who was participating by phone, explained that the refusal to produce the documents at the classified facility was *not* due to our security clearances no longer being valid (he confirmed that they in fact remain valid), but because, according to the CIA, we no longer had a "need to know." When I asked how we could have a "need to know" during the administrative proceeding but not now, I understood Mr. Pines to say that a "need to know" is determined strictly from the government's perspective and that viewed as such the government's interests were not served by allowing us access to documents at this time. I then attempted to explain that in our view national security interests were served by the appropriate adjudication of defector disputes, including those that raised Constitutional issues, through a process that protected classified information and allowed the issues to be resolved on their merits and that allowing us continued access to relevant documents furthered this purpose. Mr. Pines disagreed with this, but I was unable to understand his logic.

We do not think it likely that the Court has gotten a misimpression of defendants' conduct in denying us access to documents in Washington D.C. on October 12. As is explained above, the issue in the current motion is whether Regulation C should be considered by the Court. However, since you have demanded that we

clarify the situation, we intend to do so by submitting a copy of your letter and this response to the Court.

We trust you will let us know if you have any further concerns.

Sincerely,

/s/ STEVEN W. HALE
STEVEN W. HALE

SWH:ck
Enclosures

cc: Betsy Alaniz, Esq.